



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 19, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-0492

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113225.

The Texas Department of Health (the "department") received a request for information concerning investigations of thirteen particular home health agencies. You assert that portions of the requested information are protected from required public disclosure based on section 552.101 of the Government Code.

We received the department's request for a decision two months after the department received the request for information. When a governmental body fails to submit a request to this office for an open records decision within the statutory ten-day deadline, the requested information is presumed to be public. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. In this case, compelling reasons exist to overcome the presumption that the requested information is public because, as we will explain, portions of the information are made confidential by statutory law. *See* Open Records Decision No. 150 (1977).

Section 552.101 of the Government Code excepts from disclosure information that is confidential by law. We begin with the federal forms, form HCFA-2567. In accordance with federal regulations, you must release these forms provided that (1) no information identifying individual patients, physicians, other medical practitioners, or other individuals shall be disclosed, and (2) the provider whose performance is being evaluated has had reasonable opportunity to review the report and to offer comments. 42 C.F.R. §§ 401.126, 113; *see* Open Records Decision No. 487 (1988).

Turning to the state forms, we conclude that the department must also release these forms, but with deletions of information contained from medical records. Access to medical record information is governed by either the Medical Practice Act, V.T.C.S. 4495b, section 5.08, or in the case of medical records of a mental health patient, chapter 611 of the Health and Safety Code. Open Records Decision No. 598 (1991); *see* V.T.C.S. 4495b, § 5.08(bb), (c), (h), (j), (k), Health and Safety Code §§ 611.002, .004, .0045 .006; *see also* Health and Safety Code § 142.009(d)(5). We have marked the documents accordingly.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 113225

Enclosures: Marked documents,

cc: Mr. Travis E. Poling
San Antonio Express-News
P.O. Box 2171
San Antonio, Texas 78297
(w/o enclosures)